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**Defining The Perpetrator:  
Seeking Proof Of Intent.**

by

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## INTRODUCTION

The Convention on the Prevention and Punishment of the Crime of Genocide that was passed by the General Assembly of the United Nations on 9 December 1948 defines genocide as "...acts committed with intent to destroy...." There has been enough dissatisfaction with that definition to spark a variety of amended definitions. However, all of these definitions continue to include intent as a major criterion.<sup>1</sup> As a result, students of genocide have been faced with the problem, and continue to struggle with the methodological issue, of how to ascertain intent in a concrete, historical case of genocide. How this problem is faced by different scholars seems to depend on their disciplinary affiliation and, more specifically, on how their early training defined data and their sources. The continuing debate sparked by David Irving's assertion of Hitler's innocence in the murder of the Jews gives this issue renewed urgency.<sup>2</sup>

## THE HISTORIANS' VIEW

Since historians often deal with events that occurred before the birth

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<sup>1</sup> See the summaries in Helen Fein, "Genocide: A Sociological Perspective," *Current Sociology*, vol. 38, no. 1 (Spring 1990): chapter 2, and Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies*. New Haven and London: Yale University Press, 1990. pp. 12-23.

<sup>2</sup> David Irving, *Hitler's War*. New York: The Viking Press, 1977.

of any currently living person they are much less concerned with interviews than with the written record. That record is usually quite inadequate for studying genocides because past historians were very little interested in the common people. Therefore, the victims of genocide only rarely appear in the historical record. That record may consist of letters, diaries, biographies or histories. The question that must always be asked is whether the author was a participant or a contemporary and for what purpose the record was written. We do know that history as an academic discipline is of rather recent origin and that early historians usually wrote in the employ of their rulers. It was their task to glorify their rulers' reign rather than to create an accurate record of events. Thus, such written records must always be examined carefully for their credibility and reliability.

With the increase in bureaucracy, states have increasingly accumulated archives on a wide variety of their activities. But governments seem to have a very ambivalent attitude toward these records. On the one hand, there always seem to be matters that they do not commit to these records; on the other hand, they restrict access to them. To the extent that researchers do obtain access, they need to decide who made the record, how much first-hand knowledge the authors really had, what their position was, and in what way they may have biased the record. In addition, when such records deal with matters outside the country of their origin, they usually require translation. The researcher may then have the additional task of verifying the accuracy of the translation. Needless to add, there usually are relevant events and interactions that are not recorded and that can only be reconstructed by conjecture and reconstructions based on circumstantial evidence.

The perpetrators of pre-modern genocides reported their deeds with



the same pride with which they reported their victories in wars, with which genocides were most often associated. It is only since the enlightenment, with its discovery of the value of human life, that perpetrators tried to hide and deny their deeds. Even when they did not deny their culpability, they tried to deflect public disapproval by using ambiguous semantics. The most famous such case is the Holocaust committed by the nazis under the label of the 'final solution'. More recently, the Serbs have been trying to justify their massacres as 'ethnic cleansing'. But these are the only cases in the twentieth century in which the perpetrators made no secret of their intent. For the scholar there remains the problem of what to do about the quite large number of events that would be recognized as genocides if intent could be demonstrated.

### **THE SOCIOLOGISTS' VIEW**

In many of these cases, no written record was created or survived. Eyewitnesses close enough to the top levels of command either did not survive or refuse to incriminate themselves. In addition, the perpetrators of genocides often attempt to hide their deeds under the cover of a war or as a natural catastrophe such as a famine caused by drought.

In such a situation, a sociologist, though preferring the evidence of participants and witnesses, would have to rely on circumstantial evidence. Fortunately, such evidence is usually abundant. The first item of evidence is, of course, the disappearance of a group. Such disappearances occur only rarely due to chance. Additional evidence would consist of a whole range of events and activities that are unlikely to be chance events. Many illustrations come readily to mind. In East Pakistan - now Bangladesh - the killing of the professional, economic, and intellectual elites in 1972 could

only have occurred if it had been carefully planned. The persecution, on-going since 1975, of East Timorese who support self-determination is not a chance event. Nor can the continuing victimization of the non-Moslems in the Southern Sudan be explained without reference to intent.

Difficulties arise when the event could have been the result of misguided policies or the incompetent execution of well-intentioned policies. Thus, the attraction of persecuting a group during wartime is that the perpetrator can claim that the losses were the unavoidable by-product of wartime conditions. The current government of Turkey still advances this explanation in its denial of the Armenian genocide although quite enough evidence has been accumulated to show that it was a carefully planned event.

The other time that is favoured by many perpetrators for the persecution of their victims is a period of natural events that adversely affect agriculture, such as drought, extreme heat or extreme cold, floods, insect plagues, etc. When such events escalate into famines and mass starvation, it is often difficult to find evidence that allows us to distinguish between natural catastrophes, governmental bungling, and deliberately induced famine conditions. Thus, while it is now quite clear that the great Ukrainian famine of 1933-34 was produced with intent<sup>3</sup>, the origin of the Ethiopian famine of 1984-86 is still being debated;<sup>4</sup> while the drought has been ruled out as a cause by most observers, there is still much debate about the relative contributions of governmental intent, erroneous policies,

<sup>3</sup> James Mace, "The Man-Made Famine of 1933 in the Soviet Ukraine: What Happened and Why?" In *Toward the Understanding and Prevention of Genocide*, ed. Israel Charny. Boulder Col.: Westview, 1984.

<sup>4</sup> Edward Kissi, *Beyond the Visual Reality of Starvation: A Survey of the Emerging Debate on the Ethiopian Famine of 1984-1986*. Montreal: Montreal Institute for Genocide and Human Rights Studies, Occasional Paper, February 1993.



and the incompetence of the cadres that carried them out.

There exists a small body of literature on man-made famines.<sup>5</sup> They represent a group of particularly difficult cases from the point of view of ascertaining intent. It is probably the case that most man-made famines occurred as a result of ill-advised government policies. However, in the twentieth century, the technologies of storing and transporting food surpluses have become developed to the point where famines and starvation anywhere in the world can be avoided by timely aid. Therefore, when such aid and its distribution do not prevent starvation, the researcher is justified in looking for additional evidence that the famine was intended as a weapon against a group that the regime wanted to victimize. Ethiopia, the Sudan, and Mozambique are cases that come to mind as subjects for investigation along these suggested lines.

## THE CONSEQUENCES

As every student of methodology should know, the choice of research methods will have an effect on the kinds of results that can be obtained. The study of intent provides a rather dramatic illustration of this basic rule. In twentieth century genocides the study of the intent of the perpetrators has often hinged on finding the written record of the perpetrators' orders.

A good part of the differing interpretations between the Turkish government and the Armenians of the events of 1915 hinges on the existence of written orders for the genocide.<sup>6</sup> While the Armenians produced such documents, the defenders of the Turkish position have tried

<sup>5</sup> William Dando, "Man-Made Famines: Some Geographical Insights from an Exploratory Study of a Millenium of Russian Famines." *Ecology of Food and Nutrition*, vol. 4 (1976): 219-234.

<sup>6</sup> Yaghak N. Dadrian, "The Naim-Andonian Documents on the World War I Destruction of Ottoman Armenians: The Anatomy of a Genocide." *International Journal of Middle East Studies*, vol. 18, no.3 (August 1986): 311-360.

to prove them to be forgeries. What sometimes gets lost in this debate is the great volume of evidence favouring the Armenian position which makes the existence of written orders quite irrelevant.

Even more dramatic is the debate started by David Irving' 1977 assertion that no written order from Hitler for the implementation of the 'final solution' exists.<sup>7</sup> Even more dramatic because a series of otherwise serious and respectable scholars have allowed themselves to be seduced into participation in this quite preposterous debate.<sup>8</sup> This debate is kept alive by Irving's attempts to organize speaking tours, by the protests this generates, including evictions from the U. S. and Canada, and by his many efforts to remain in the public eye.<sup>9</sup>

More recently, the prosecution of Erich Honecker, the leader of the former East Germany, was abandoned. He was to have been accused of ordering the shooting of any East German who tried to escape over the wall that had been specifically built to prevent East Germans from fleeing his country. But the charges were dropped because no written order for these shootings could be found. The authorities were so embarrassed by their inability to locate such an order that they used the accused's ill health as an excuse for not going ahead with the case.

<sup>7</sup> David Irving, op. cit. For a detailed examination of the errors, omissions, misinterpretations, deletions, undocumented assertions and downright mistranslations that Irving uses to buttress his arguments see the review article by Charles W. Sydnor, jr., "The Selling of Adolf Hitler: David Irving's *Hitler's War*," in *Central European History*, vol. 12 (June 1979): 169-199.

<sup>8</sup> See, for instance: Gerald Fleming, *Hitler and the Final Solution*. Berkeley: University of California Press, 1984. (© 1982) and Eberhard Jäckel, "Hitler und der Mord an den Europäischen Juden." and "Irving, Hitler und der Judenmord." both in Märtzsheimer and Frenzel, et. al., eds., *Im Kreuzfeuer: Der Fernsehfilm 'Holocaust'; Eine Nation ist betroffen*. Fischer Tagebuch Verlag, 1979.

<sup>9</sup> For the headlines he has been accorded in England see: David Cesarani, "Anti-Semitism: Bad and Dangerous." *New Statesman and Society* (July 10, 1992): 19-20 as well as Robert O'Connor "London paper stirs up new diary controversy." *Editor and Publisher* (September 12, 1992): 17.



These two cases do not have the same significance. In the case of Hitler, Irving and his supporters attempt to rehabilitate Hitler by showing that he was not responsible for the evil that was committed in his name. In the case of Honecker we have evidence that otherwise reputable jurists have agreed that only the written order is admissible as evidence of intent.

There are two problems with this reliance on the written order to prove intent. The first one is that it leads researchers to undervalue, or entirely ignore, a large body of relevant evidence. The second problem is that it completely distorts the reality of which these events are an integral part. I do not propose to go into detail here on the body of relevant evidence because that would vastly expand this paper. Instead I shall focus on the second problem, the distortion of reality, because it seems to have the more far-reaching consequences.

The particular distortion of reality of concern here is the postulation of a system of rule in which only the written word carries authority. In a democratic-bureaucratic society it is conceivable that orders may have to be written down. It is even conceivable that a prime minister or president, upon giving a verbal order, is asked by his minister to put it in writing. While such a situation is conceivable, it seems to be hardly credible. If it is hardly credible in a democracy, it sounds downright preposterous in a totalitarian dictatorship. If an underling were to insist on receiving the dictator's orders in writing, he would likely be fired, if not executed for disloyalty. It is exactly because of the nature of totalitarian and charismatic leadership that the spoken word carries authority and that the written record is bent to the ends of the ruler.

The records left by totalitarian regimes have two additional problems, both of which stem from their dictators' awareness of the outside



world's disapproval of their misdeeds. The first problem is that they will manufacture deliberate disinformation, as Stalin and his henchmen did concerning the Gulag, the Kirov murder, the massacre in the Katyn forest, etc.<sup>10</sup> The second problem is that they often invent a special terminology that is ambiguous enough to hide their true intentions. Thus, the actual meanings of such terms can only be confirmed by matching them with the actual events that they referred to.

## CONCLUSION

The case of Hitler's presumed order for the implementation of the 'final solution' and the debate it has sparked illustrates how the choice of a research method can affect the findings. The historians' insistence that there must be written evidence has engendered a whole debate which proceeds on the assumption that such written records are the only evidence admissible. Even more serious: that assumption allows these scholars to ignore reality and all other evidence bearing on the question of intent by constructing a fictitious reality. In this fictitious reality charismatic leaders and totalitarian rulers have no way of exercising their authority except by the written word. What remains puzzling is that this fictitious reality did not appear preposterous even to its own authors.

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<sup>10</sup> Robert Conquest. *The Great Terror: A Reassessment*. Edmonton: The University of Alberta Press, 1990.

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